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October 17, 2011

**VIA ECF**

Honorable Susan D. Wigenton, U.S.D.J.  
United States District Court  
Martin Luther King Jr. Federal Building  
& Courthouse  
Room 5060  
50 Walnut Street  
Newark, New Jersey 07102

Re: North Jersey Brain & Spine Center v. Connecticut General Life  
Insurance Company  
Civil Action No.: 10-4260 (SDW/MCA)

Dear Judge Wigenton:

We represent plaintiff North Jersey Brain & Spine Center (“NJBSC”) in the above-captioned matter.

NJBSC has reviewed Your Honor’s Opinion (D.E. 44) and Order Adopting the Report and Recommendation of the Magistrate Judge (“Order”) (D.E. 45), addressing NJBSC’s remand motion and the application of ERISA to this dispute. In the Opinion, the Court expressly held that “[p]laintiff’s [state law] claims are completely preempted by the ERISA statute” (*slip op.* at 6), and re-casted those claims as an ERISA enforcement action. (*Slip op.* at 6-7).

NJBSC respectfully disagrees with Your Honor’s ruling and is hereby advising the Court that plaintiff will “forego any ERISA claim it may have and [will] stand on its [state law] complaint.” In so doing, Your Honor’s Order is deemed “final and appealable.” See Pascack

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Valley Hospital, Inc. v. Local 464A UFCW Welfare Reimbursement Plan, 388 F.3d 393, 398 (3d Cir. 2004).

Consequently, notice is hereby given to the Court and counsel that NJBSC intends to timely file a Notice of Appeal to the Third Circuit for purposes of obtaining appellate review of the significant issues presented in this matter.

Respectfully,

ERIC D. KATZ

EDK/av

cc: E. Evans Wohlforth, Esq.